

**RESOLUTION NO. 2016-13**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE YUBA COUNTY WATER AGENCY  
CONCERNING THE PROCESSING OF A PROPOSED GROUNDWATER  
INITIATIVE FILED WITH THE AGENCY ON SEPTEMBER 30, 2016**

BE IT RESOLVED by the Board of Directors of the Yuba County Water Agency as follows:

1. Recitals. This resolution is made with reference to the following background recitals:

a. Pursuant to the Lower Yuba River Accord Water Purchase Agreement, the Agency has entered into conjunctive use agreements with its Member Units, which approve groundwater substitution transfers to buyers outside of Yuba County under specified conditions and in accordance with all applicable laws and regulations, including the basin management provisions of the Agency's Groundwater Management Plan;

b. The Agency's Board of Directors has enacted Ordinance No. 14 establishing procedures for YCWA elections, including procedures for the processing of initiatives;

c. On September 30, 2016, five residents of Yuba County filed a proposed initiative measure with the YCWA Elections Official that purports to enact Ordinance No. 15 of the Agency titled "An Ordinance Establishing Minimum Contracting Requirements for the Sale of Water" (the "Initiative");

d. Section 6 of Ordinance No. 14 provides that YCWA will issue a title and summary to the proponents of any legally valid initiative; and

e. The California Supreme Court has instructed that, "[w]hen a significant part of a proposed initiative measure is invalid, the measure may not be submitted to the voters." (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal. 4th 205, 221-222.).

2. Findings. The Board makes the following findings:

a. Under California law, groundwater pumped by landowners is a property right belonging to those landowners.

b. Under the California Constitution and the Agency Act, YCWA is prohibited from enacting a general tax and may only enact a special tax upon a two-thirds vote of the citizens of Yuba County.

c. YCWA is prohibited by the United States and California Constitutions from taking any private property without paying just compensation for the property rights taken.

d. The Agency is prohibited by the California Constitution from donating its funds to any other entity or person without a clear public purpose for such a gift.

e. YCWA may not impair its contracts or impair its Member Units' freedom to contract in violation of the prohibitions against such impairments in the U.S. and California Constitutions.

f. Upon discussion with and upon advice of its legal counsel, the Board understands, believes and determines that significant parts of the Initiative are invalid on the grounds that it violates all of the constitutional prohibitions and legal limitations set forth above in paragraphs (b) through (e), because it would require YCWA to enact a local law purporting to effectuate: (i) a prohibited general tax beyond the Agency's authority to impose and/or a special tax lacking the required 2/3 approval of the voters of Yuba County; (ii) a taking of private property without just compensation or any public purpose; (iii) taking funds earned from groundwater substitution transfers conducted in accordance with existing contracts and all applicable laws and regulations, and giving those funds to other local agencies and private individuals without furthering any public purpose or objective of the Agency; and (iv) an unlawful impairment of YCWA's and the Member Units' existing contracts under which they transfer water in accordance with the terms of the Lower Yuba River Accord Water Purchase Agreement and Member Unit conjunctive use agreements.

g. In addition, the Initiative is ambiguous and could be interpreted to affect the Lower Yuba River Accord Water Purchase Agreement and related agreements with State agencies and other organizations, impairing not only local contracts but also contracts of statewide benefit and importance.

h. Because significant parts of the proposed Initiative measure are invalid, the measure may not be submitted to the voters. Therefore, in accordance with the California Supreme Court's instruction, the Board is required to refuse the Initiative to prevent it from being placed on the ballot.

i. No purpose would be served by further processing the Initiative for signature gathering, because the Board would refuse the measure if it were to be qualified and presented for action. Refusing the Initiative now is prudent and causes the least harm by minimizing the unnecessary expenditure of public resources, and is fair and responsible because it prevents members of the public from being lead to believe that the Initiative is legal and a proper subject for voter consideration.

3. Determination. Based on the foregoing findings, the Board determines that significant parts of the Initiative are invalid and exceed the Board's legal authority to enact. As a result, the Initiative, if passed, would be unenforceable and the Board could be subject to legal action by the Member Units, affected landowners, and the State if it attempted to enforce the measure. Furthermore, the Board believes that the Initiative should not be processed, because doing so would waste public resources, would mislead the electorate, and, if submitted to and approved by the voters, would not result in producing a binding and enforceable measure. Therefore, the Board orders and directs YCWA's legal counsel to not prepare or issue a title and summary for the Initiative and to instead send a letter to the Initiative proponents stating the reasons for the Board's refusal to accept and process the Initiative consistent with the findings and determinations set forth in this resolution.

PASSED AND ADOPTED by the Board of Directors of the Yuba County Water Agency on the 11<sup>th</sup> day of October, 2016, by the following vote:

AYES: Directors Abe, Belza, Fletcher, Hastey, Nicoletti and Vasquez  
NOES: None  
ABSTAIN: None  
ABSENT: Director Griego



Thomas "Tib" Belza  
Chair, Board of Directors

Attest:



for Jeanene Upton  
Board Secretary